IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 297/2001
(Old no. 72/1995)

1, Smt. Kripi Devi W/o Mukandi Lal (deceased)
R/o House No. 120, Mohalla Wesh Rajputana
Roorkee, District Haridwar.

1/1. Arun Kumar Gupta S/o Late Mukandi Lal
R/o House No. 120, Rajputana West
Roorkee, District Haridwar

.....Appellant

Vs

Mohd. Hanif S/o Ismail
Delux Tailor 53/2, Rampur Road
Main Bazar Roorkee
District Haridwar .... Respondent

Sri Pankaj Miglani, learned counsel for the appellant.
Sri N.C. Gupta, learned Counsel for the respondent.

Hon'ble B.C. Kandpal, J.

This is second Appeal, U/S 100 C.P.C., by the defendant against the judgment and decree dated 10-1- 1995 passed by the Civil Judge Roorkee, in Civil Appeal No. 5 of 1993, dismissing the appeal and confirming the judgment and decree dated 27 - 1- 1993 passed by the II Addl. Roorkee in O.S. No. 197/1986.

2- Brief facts of the case are that the plaintiff/appellant is the owner of upper story of house No. 53/2, shown in Nagar Palika record. According to her the defendant made request to her to give him the premises shown with letters ABCD in the map

attached with plaint on lease till be gets another place for his tailoring shop, as he was evicted from the place where he was running his tailoring business. Lateron the plaintiff asked him to vacate the premises but he did not pay any heed to it and did not vacate the said premises. The plaintiff alleged that the defendant was not a tenant but he was given the premises in dispute on licence for time being. She also instituted proceedings U/S 448 I.P.C. in which the defendant pleaded that his is tenant of the disputed premises since 1.1.1981 on monthly rent of Rs. 70/-. The plaintiff also demanded rent vide notice dated 6-8-1984 and alleged that Rs. 2520/- rent is due against the defendant for the period 1.8.181 to 3.7.84. The plaintiff terminated the tenancy of the defendant vide notice 6-8-84. The notice was served on the defendant on 7-8-84. The plaintiff filed suit for recovery of Rs. 2179-31 as arrears of rent and also claimed damages @ Rs 4-00 per day till the date of vacating the premise in dispute. The plaintiff also pleaded that on the other portion of the building shown with letters BECF she was in possession and on 18.11.85 the defendant break-open the lock of this premises and took illegal possession of the same. She has also claimed the eviction of the defendant from this premises also.

3-The defendant contested the suit by filing his W.S and admitted that he is the tenant of the plaintiff on both the premises since the year 1975. He also alleged that the rent of both the premises in Rs. 70/- per month. He denied the allegations of taking forcible possession on the property in dispute. He also alleged that when the plaintiff did not accept the rent, he deposited the rent with Civil Judge (J.D.) Roorkee in SCC Suit No. 1/85. He also alleged that the rent upto

2-1-87 is in deposit and for the period upto 31-7-1991 tender has been filed in order to deposit the rent through tender.

4- The learned trial Judge framed relevant issues in the case. Thereafter parties led their evidence. The trial court after hearing learned counsel for the parties and perusing the record came to the conclusion that the defendant is the tenant of the plaintiff on the disputed property since August 1981 at a monthly rent of Rs. 70/-. Accordingly the suit of the plaintiff was dismissed.

5- Feeling aggrieved the plaintiff filed appeal before Civil Judge Roorkee, which was also dismissed by the lower appellate court vide impugned judgment and decree dated 10-1-1995.

6- Thereafter, the plaintiff has preferred this second Appeal before the Allahabad High Court, which has been transferred to this court after creation of new State.

7- Heard learned Counsel for the parties and perused the record.

8- Having considered the arguments advanced by the learned counsel for the appellant and after perusal of the evidence on record, I am of the view that this second appeal is concluded by concurrent finding of facts . Therefore, I do not find any ground to interfere in the impugned judgments and orders passed by the courts below. Both the courts below have recorded concurrent finding of facts, which cannot be interfered

at the stage of second appeal. I also do not find any substantial question of law involved in this case.

9- The appeal is dismissed in limine.

(B.C. Kandpal, J.)

Dated : October 27, 2006
ISB